

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

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CNH AMERICA LLC and BLUE LEAF) Civil Action
I.P., INC.,)
)
Plaintiffs,)
)
v.)
)
JON E. KINZENBAW and KINZE)
MANUFACTURING, INC.,)
)
Defendants.) No. 08-945-GMS

- - -

Tenth Day of Trial
Wilmington, Delaware
Friday, February 11th, 2011
9:30 a.m. (Deliberations)

- - -

BEFORE: HONORABLE GREGORY M. SLEET, Chief Judge, and
a Jury

APPEARANCES:

FREDERICK L. COTTRELL, III, ESQ., and
CHAD M. SHANDLER, ESQ.,
Richards, Layton & Finger

-and-

MARK BOLAND, ESQ., and
RAJA N. SALIBA, ESQ.,
Sughrue Mion PLLC
(Washington, D.C.), and
JOHN B. SCHERLING, ESQ.
(La Jolla, C.A.)

Counsel for Plaintiffs

1 **APPEARANCES (Continued):**

2 **RICHARD L. HORWITZ, ESQ., and**
3 **Potter Anderson & Corroon, LLP**

4 **-and-**

5 **MARK L. DURBIN, ESQ.**
6 **PETER N. MOORE, ESQ., and**
7 **WILLIAM F. WARD, ESQ.**
8 **Wildman, Harrold, Allen & Dixon LLP**
9 **(Chicago, IL)**

10 **Counsel for Defendants**

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1 (The following took place in open court.)

2 THE COURT: Good afternoon, counsel. I am
3 advised by the foreperson that the jury has arrived at a
4 unanimous verdict.

5 Ms. Walker, will you please bring the jury in.

6 (Jury enters courtroom at 4:32 p.m.)

7 THE COURT: Good afternoon, members of the jury.
8 Please take your seats.

9 I see that it appears that Juror No. 6 speaks
10 for you. Is that true?

11 JUROR NO. 6: Yes.

12 THE COURT: Juror No. 6, would you rise and pass
13 the verdict form to Ms. Walker.

14 Ladies and gentlemen, I am going to spend a few
15 moments -- please be seated -- and inspect the verdict.

16 (Foreperson hands verdict form to Chief Deputy
17 Clerk Walker.)

18 (Ms. Walker hands verdict form to Court.)

19 (Pause.)

20 THE COURT: Members of the jury, please harken
21 to your verdict, as Ms. Walker is about to announce it. You
22 may be polled individually as to whether this is your own
23 individual verdict, so please listen carefully to the
24 announcement.

25 CHIEF DEPUTY CLERK WALKER: We, the jury,

1 unanimously find as follows:

2 On the issue of infringement, as to the '428
3 patent by Kinze Manufacturing, do you find that plaintiffs
4 CNH and Blue Leaf have proven, by a preponderance of the
5 evidence, that Kinze has infringed any of the asserted
6 claims of the '428 patent?

7 As to Claim 17, no. As to Claim 18, no. Claim
8 146, no. Claim 207, no.

9 As to infringement of the '193 patent by Kinze,
10 do you find that CaseIH has proven, by a preponderance of
11 the evidence, that Kinze has infringed any of the asserted
12 claims of the '193 patent?

13 As to Claim 62, no. As to Claim 129, no. As to
14 Claim 135, no. Claim 190, no.

15 On the issue of indefiniteness, as to the '428
16 patent, do you find that Kinze has proven by clear and
17 convincing evidence that any of the following claims of the
18 '428 patent are invalid because a person of ordinary skill
19 in the art could not reasonably determine their scope, and
20 therefore they are indefinite?

21 As to Claim 17, no. Claim 18, no. Claim 146,
22 no. Claim 207, no.

23 As to indefiniteness of the '193 patent, do you
24 find that Kinze has proven by clear and convincing evidence
25 that any of the following claims of the '193 patent are

1 invalid because a person of ordinary skill in the art could
2 not reasonably determine their scope, and therefore they are
3 indefinite?

4 As to Claim 62, no. Claim 129, no. Claim 135,
5 no. Claim 190, no.

6 On the issue of the Krauss two-hole seed cup,
7 the invention date of Krauss two-hole seed cup, do you find
8 that Kinze has proven by clear and convincing evidence that
9 the Krauss two-hole seed cup was invented and not
10 subsequently abandoned, suppressed, or concealed, publicly
11 used, sold, or offered for sale, before August 20th, 1996?

12 Yes.

13 As to IH's invention date, do you find that
14 CaseIH has proven by clear and convincing evidence that it
15 invented the subject matter of Claims 17, 18, 146 and 207 of
16 the '428 patent and Claim 62 of the '193 patent before the
17 Krauss two-hole seed cup was invented, publicly used, sold,
18 or offered for sale?

19 Yes.

20 On the issue of anticipation, anticipation of
21 the '428 patent, do you find that Kinze has proven by clear
22 and convincing evidence that any asserted claim of the '428
23 patent is invalid because it is anticipated?

24 As to Claim 17, yes. Claim 18, yes. Claim 146,
25 yes. Claim 207, yes.

1 On the issue of anticipation for the '193
2 patent, do you find that Kinze has proven by clear and
3 convincing evidence that any asserted claim of the '193
4 patent is invalid because it is anticipated?

5 As to Claim 62, yes. Claim 129, yes. Claim
6 135, yes. Claim 190, yes.

7 On the issue of obviousness of the '428 patent,
8 do you find that Kinze has proven by clear and convincing
9 evidence that any of the following claims of the '428 patent
10 are invalid because the claim, as a whole, would have been
11 obvious to a person of ordinary skill in the art at the time
12 of the invention?

13 As to Claim 17, yes. Claim 18, no. Claim 146,
14 yes. Claim 207, no.

15 For the '193 patent, do you find that Kinze has
16 proven by clear and convincing evidence that any of the
17 following claims of the '193 patent are invalid because the
18 claim, as a whole, would have been obvious to a person of
19 ordinary skill in the art at the time of the invention?

20 As to Claim 62, yes. Claim 129, yes. Claim
21 135, yes. Claim 190, yes.

22 On the issue of written description and
23 enablement, for the '428 patent, do you find that Kinze has
24 proven by clear and convincing evidence that any of the
25 following claims of the '428 patent are invalid due to an

1 inadequate written description?

2 As to Claim 17, no. Claim 18, no. Claim 146,
3 no. Claim 207, no.

4 For written description, do you find that Kinze
5 has proven by clear and convincing evidence that any of the
6 following claims of the '193 patent are invalid due to an
7 inadequate written description?

8 As to Claim 62, no. Claim 29, no. Claim 135,
9 no. Claim 190, no.

10 As to enablement of the '428 patent, do you find
11 that Kinze has proven by clear and convincing evidence that
12 any of the following claims of the '428 patent are invalid
13 because they are not enabled?

14 As to Claim 17, no. Claim 18, no. Claim 146,
15 no. Claim 207, no.

16 As to enablement for the '193 patent, do you
17 find that Kinze has proven by clear and convincing evidence
18 that any of the following claims of the '193 patent are
19 invalid because they are not enabled?

20 As to Claim 62, no. Claim 129, no. Claim 135,
21 no. Claim 190, no.

22 On the issue of inequitable conduct, do you find
23 that Kinze has proven by clear and convincing evidence that:

24 (i) An individual or individuals involved in
25 preparing or prosecuting the '428 or '193 patents withheld

1 information from or made misrepresentations to the Patent
2 Office that was material to the subject matter being
3 claimed?

4 No.

5 (ii) Such individuals acted with the intent to
6 deceive the Patent Office?

7 No.

8 (iii) Do you find, after balancing any
9 materiality and intent, that Kinze has proven by clear and
10 convincing evidence that the individual or individuals
11 committed inequitable conduct and that the '428 or '193
12 patents should therefore be declared unenforceable?

13 No.

14 THE COURT: Does either party wish to have the
15 jury polled?

16 MR. DURBIN: No, Your Honor.

17 MR. BOLAND: No, Your Honor.

18 THE COURT: Ladies and gentlemen, your verdict
19 having been announced as unanimous, an agreed-upon verdict,
20 I will direct that it be filed with the Clerk of the Court.
21 I hereby dismiss you from your duties and responsibilities,
22 with the thanks of the parties and the hearty thanks of the
23 Court.

24 Thank you very much, ladies and gentlemen. Safe
25 travels.

1 (At 4:42 p.m. the jury was excused.)

2 THE COURT: You can sit for a moment, if you
3 would.

4 Counsel, what I would like you to do is
5 decompress a little bit, you file what you must, but spend a
6 few days, and then get a briefing schedule for me for your
7 post-verdicts I would say next Friday.

8 MR. DURBIN: For the schedule, Judge?

9 THE COURT: Just to have a schedule. Of course,
10 you need to file your notices of appeal within the time
11 prescribed by the rules. But if you need a longer period of
12 time, I am comfortable with that.

13 Is next Friday adequate.

14 MR. DURBIN: Yes, Judge.

15 THE COURT: For a briefing schedule?

16 MR. BOLAND: Yes, Your Honor.

17 THE COURT: Counsel, this is a great help, we
18 have found, to us in chambers. I am going to direct that
19 you file electronic copies of your posttrial briefs with
20 hyperlinks to cited cases, exhibits, and transcript pages.
21 It's an enormous help for us in going back through what I am
22 sure will be a substantial record.

23 Counsel, well tried. Good luck.

24 I normally would come out, after speaking with
25 the jury, and sharing objective and constructive comments.

1 I am not going to have the time to do that this evening.

2 But good luck as you move along. Take care.

3 (Counsel respond "Thank you, Your Honor.")

4 (At 4:45 the trial was concluded.)

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7 Reporter: Kevin Maurer

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